

9 FAM 41.22 Notes

(TL:VISA-14; 8-30-88)

9 FAM 41.22 N1 Aliens Entitled to A-1 Classification

(TL:VISA-14; 8-30-88)

The following aliens are entitled to A-1 nonimmigrant classification under INA 101(a)(15)(A):

9 FAM 41.22 N1.1 Alien Accredited by Foreign Government as Officer at Diplomatic or Consular Post

(TL:VISA-14; 8-30-88)

a. An alien duly accredited by a foreign government recognized de jure by the United States as an officer of a permanent diplomatic mission or consular post established in the United States with the consent of the Department, who seeks to enter the United States solely for the purpose of performing duties appropriately performed by such an officer. (Officers of diplomatic missions usually have the title of "Ambassador," "Minister," "Counselor," "Secretary," or "Attache" (such as military, commercial, financial, agriculture, or scientific); and those of consular posts, "Consul General," "Consul," or "Vice Consul.") [See 9 FAM 41.22 N4 of this section regarding "Honorary Consul."]

b. De jure recognition is not synonymous with diplomatic relations, and de jure recognition may continue even though diplomatic relations have been severed. Consequently, an A-1 visa may be issued to an alien who seeks to enter the United States for the purpose of performing official duties for a government which has severed diplomatic relations with the United States, provided that:

(1) The United States has recognized that government de jure prior to severance of relations;

(2) There is a continuing status of de jure recognition; and

(3) There is a reciprocal exchange of representatives between the United States and that government. An A-1 classification for such an alien is warranted even if, owing to the absence of diplomatic relations, the individual will function under the aegis of the embassy of a third country protecting power.

9 FAM 41.22 N1.2 Alien Head of State or Government

(TL:VISA-14; 8-30-88)

An alien holding the position of head of state or head of government in a government recognized de jure by the United States.

9 FAM 41.22 N1.3 Certain Alien Officials of Foreign Governments

(TL:VISA-14; 8-30-88)

An alien seeking to enter the United States to perform official duties for a government recognized de jure by the United States who holds any of the following positions in that government:

- (1) A position corresponding to that of a member of the U.S. Cabinet;
- (2) The presiding officer of a national legislative body; or
- (3) A member of the highest judicial tribunal.

9 FAM 41.22 N1.4 Family Member of Alien Classifiable A-1

(TL:VISA-14; 8-30-88)

An alien who is a member of the immediate family of an alien entitled to A-1 classification. [See 22 CFR 41.21(a)(3) and sec. 41.21 N5.].

9 FAM 41.22 N1.5 Career Courier

(TL:VISA-14; 8-30-88)

Couriers of career as defined in 22 CFR 41.22(h)(1).

9 FAM 41.22 N2 Aliens Entitled to A-2 Classification

(TL:VISA-14; 8-30-88)

The following aliens are entitled to A-2 nonimmigrant classification under INA 101(a)(15)(A):

9 FAM 41.22 N2.1 Alien Accredited by Foreign Government as Employee at Diplomatic or Consular Post

(TL:VISA-14; 8-30-88)

An alien duly accredited by a foreign government recognized de jure by the United States who seeks to enter the United States solely to serve as a full-time employee of a permanent diplomatic mission or consular post established in the United States by that government, who is not within any of the categories entitled to A-1 classification, and whose duties are those normally performed by employees of permanent diplomatic missions or consular posts established in the United States.

9 FAM 41.22 N2.2 Alien Seeking to Perform Official Duties for Foreign Government

(TL:VISA-14; 8-30-88)

An alien seeking to enter the United States, pursuant to orders or instructions from a government recognized de jure by the United States, to perform duties or services for that government (including participation in an international meeting or conference, other than one convened by or under the auspices of an international organization, held in the United States) which, in the view of the Department, are official in nature. [See sec. 9 FAM 41.24 N1.1 and 9 FAM 41.24 N2 for classification of aliens attending meetings or conferences convened by or under the auspices of an international organization.]

9 FAM 41.22 N2.3 Family Member of Alien Classifiable A-2

(TL:VISA-14; 8-30-88)

An alien who is a member of the immediate family of an alien entitled to A-2 classification. [See 22 CFR 41.21(a)(3).]

9 FAM 41.22 N2.4 Official Acting as Courier

(TL:VISA-14; 8-30-88)

Officials acting as couriers as defined in 22 CFR 41.22(h)(2).

9 FAM 41.22 N2.5 Personnel of Foreign Armed Services

(TL:VISA-14; 8-30-88)

Personnel of foreign armed services from other than NATO countries, coming to the United States in connection with their military status for education or training at any of the U.S. military schools, treated as foreign government officials for visa classification purposes.

9 FAM 41.22 N3 Evidence of Qualification for A-1 or A-2 Classification

9 FAM 41.22 N3.1 Purpose of Entry and Official Duties in the United States Determine Classification

(TL:VISA-14; 8-30-88)

a. Qualification for A-1 or A-2 classification is determined by the purpose for which the alien seeks to enter the United States and the nature of the official duties the alien will perform while there. Therefore, the fact that an alien is an official or employee of a foreign government or is the holder of a diplomatic, official, or service passport does not in itself, except for a head of state or head of government as provided in 9 FAM 41.22 N1.2 of this section, qualify the alien for an A-1 or A-2 visa.

b. The fact that there may be government interest or control in a given organization is not in itself controlling on the matter of A-2 entitlement. There must be some further showing that the particular duties or services to be performed by the applicant are themselves of an inherently governmental character or nature. Where an organization is essentially engaged in commercial and/or competitive activities (e.g. banking, mining, transportation), an official of such organization would generally not be qualified for an A-2 visa. Depending upon the purpose of travel to the United States, consideration may be given to B-1, L-1 or E classification. Consular officers shall review all applications for A-2 visas for officials of organizations which are not directly engaged in functions of a governmental nature as measured by U.S. standards.

c. If any difficulty is encountered in resolving a particular case, the consular officer shall submit the case to the Department (CA/VO) for an advisory opinion. The advisory opinion request shall include a full report as to the nature, structure and purpose of the organization concerned, together with the consular officer's analysis and comments.

9 FAM 41.22 N3.2 Visa Stamped "Diplomatic" or "Official" for any Nonimmigrant Classification

(TL:VISA-14; 8-30-88)

An alien may be entitled to receive a visa stamped "diplomatic" or "official" in any of the nonimmigrant classifications provided in INA 101(a)(15) without qualifying for an A-1 or A-2 classification. [See 22 CFR 41.26 and 41.27.]

9 FAM 41.22 N4 Honorary Consuls

(TL:VISA-14; 8-30-88)

Honorary consuls are usually so designated because the performance of duties for the foreign government which appoints them is only incidental to the primary purposes of entry into, or presence in, the United States, typically for business, employment, study, or some other nongovernmental purpose. Therefore, an honorary consul does not usually seek to enter solely in order to perform governmental official duties and is not normally classifiable A-1 or A-2. However, the term "honorary" may be used in the consul's title even though the consul is coming solely to perform official duties. In such a case, the consular officer shall request the Department's (CA/VO) advisory opinion for the appropriate visa classification of the alien.